

**SENTENCING — Rule 26.3 — Date of sentencing; Extension of sentencing date  
Revised 3/2010**

Rule 26.3(a), Ariz. R. Crim. P., provides that in Superior Court, "[s]entence shall be pronounced not less than 15 nor more than 30 days after the determination of guilt," unless the defendant waives his right to a pre-sentence report and agrees to be sentenced immediately. In limited-jurisdiction courts, sentence may be pronounced immediately. Rule 26.3(a) states:

Rule 26.3. Date of Sentencing; Extension

a. Date of Sentencing.

- (1) Superior Court. Upon a determination of guilt, the court shall set a date for sentencing. Sentence shall be pronounced not less than 15 nor more than 30 days after the determination of guilt unless the court, after advising the defendant of his or her right to a pre-sentence report, grants his or her request that sentence be pronounced earlier.
- (2) Courts of Limited Jurisdiction. In limited jurisdiction courts, sentence may be pronounced immediately upon determination of guilt unless the court on its own motion, or upon request of a party or victim, orders that sentence should be pronounced at a later date, not more than 30 days after determination of guilt.

The Comment to Rule 26.3(a) explains that the normal fifteen-day range of time during which sentence may be pronounced in Superior Court is established "to give the probation officer sufficient time to prepare a thorough pre-sentence report and the defendant ample time to examine the report and make objections, without unduly prolonging the proceedings (especially for those defendants who are likely candidates for probation but who are unable to obtain release pending sentencing)." However, these time limits are not jurisdictional, and the trial court does not lose the power to

sentence a defendant if the time limits have elapsed. *State v. Camino*, 118 Ariz. 89, 91, 574 P.2d 1308, 1310 (App. 1977); *State v. Valenzuela*, 23 Ariz.App. 608, 608, 535 P.2d 28, 28 (App. 1975).

Rule 26.3 provides two exceptions to the usual time for sentencing. First, under Rule 26.3(a)(1), a defendant may waive his right to a pre-sentence report and proceed to sentence immediately. The Comment to the Rule states that this procedure will "accommodate the out-of-town defendant who will be fined or placed on probation and for whom it would be a needless hardship to be required to return at a later date for sentencing." However, the Comment cautions, a court should not grant a request for immediate sentencing when the court believes that the defendant should receive a mental health examination or diagnostic center evaluation, citing Rule 26.5.

The second exception to the usual time for sentencing is provided under Rule 26.3(b), which states:

- b. Extension of Time. If a pre-sentencing hearing is requested under Rule 26.7, or if good cause is shown, the trial court may reset the date of sentencing within 60 days after the determination of guilt.

The Comment to Rule 26.3(b) explains that an extension of the sentencing date will allow for psychiatric examination or diagnostic testing of the defendant under Rule 26.5 and will also permit a full and fair hearing.